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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MIGUEL LEGASPY,  
12 Inmate Booking No. 12590965,

13 Plaintiff,

14 vs.

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16 AW ARMENTA; ROBERT HERNANDEZ;  
17 NURSING PERSONNEL  
CORRECTIONAL OFFICERS,

18 Defendants.  
19

Civil No. 13cv0301 LAB (BLM)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

20 Miguel Legaspy ("Plaintiff"), currently housed at the George Bailey Detention Facility  
21 located in San Diego, California, and proceeding pro se, has filed a civil action.

22 **I. Failure to Pay Filing Fee or Request IFP Status**

23 All parties instituting any civil action, suit or proceeding in any district court of the  
24 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See*  
25 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only  
26 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.  
27 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,  
28 169 F.3d 1176, 1177 (9th Cir. 1999).

1 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action, nor has  
2 he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, the action  
3 cannot yet proceed. *Id.*

4 **II. Conclusion and Order**

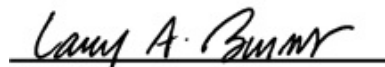
5 For the reasons set forth above, the Court hereby:

6 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
7 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

8 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:  
9 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed  
10 IFP which includes a certified copy of his trust account statement for the 6-month period  
11 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this  
13 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
14 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the  
15 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without  
16 prejudice and without further Order of the Court.

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18 DATED: February 6, 2013

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20 **HONORABLE LARRY ALAN BURNS**  
21 United States District Judge  
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